IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2168 OF 2007

Shrirang Devendra Shrimani ..Applicant

Vs.

Anil Raghunath Surolia and anr. ..Respondents

Mr. V.T. Tulpule, Senior Advocate with Mr. Harshad Bhadbhade for the applicant.

Mr. J.A. Udaipuri i/by M/s. Udaipuri and co. for respondent no.1.

Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 30, 2007.

P.C.:

1. The applicant, a learned Member of the Bar, is aggrieved by the order passed by the learned learned Judicial Magistrate, First Class at Vasai, District Thane on 25/5/2007 in C.C. No.110/07, filed by the present respondent no.1, directing P.I. of Manikpur Police Station to carry out the detailed enquiry of complaint under Section 202 of Cr.P.C. and submit the report as early as possible. The said complaint has been filed for the offences punishable under Sections

406, 417, 418, 420, 477, 500, 501, 503, 499 read with Section 34 of IPC.

2. The applicant has been impleaded as accused no.5 in the said complaint filed before the learned JMFC at Vasai, Dist. Thane. In the said complaint, it is stated that the complainant had filed the case under Section 138 of the Negotiable Instruments Act, 1881 in time but the accused no.5 had made false allegations before this court while filing Criminal Writ Petition No. 2360 of 2006 arising from the Complaint No.2438 of 2006. It was also submitted that in the other complaints i.e. Complaint Nos.2214/06, 2514/06 and 2571/06 the accused nos.1 to 4 had approached this court against the order passed therein and for seeking documents and made false allegations in that petition and thus accused no.5 had contempt of the trial court. In addition, the present respondent no.1 also alleges that the accused no.5 has been calling him court-bird.

3. Criminal Writ Petition No.2360 of 2006 had come up for admission before this court on 13/12/2006 and the learned counsel for the respondent no.2

therein i.e. the present respondent no.1 fairly stated that he would hand over true copies of the annexures to the complaint No.2438 of 2006 to the Advocate on record appeared for the petitioner in the said writ petition. It is evident that a limited grievance was raised before this court in Writ Petition No.2360 of 2006 that in the complaints i.e. Complaint Nos.2214/06, 2514/06, 2571/06 and 2438/06 the complainant had not filed copies of the annexures. On the basis of the assurance given by the learned counsel for the present respondent no.1 Criminal Writ Petition No.2360 of 2006 came to be disposed off and there is no statement appearing in the order passed by this court on 13/12/2006 which makes out a prima facie case that the present applicant, being an Advocate for the accused and petitioner in Criminal Writ Petition No.2360 of 2006 had made any contemptuous or derogatory statement against the trial court. Thus there is no foundation in the complaint i.e. Criminal Complaint No.110/2007 worth trying the present petitioner as an accused. The learned counsel for the respondent no.1 in his oral arguments has vehemently opposed this petition and submitted that a triable case has been made out against accused no.5. These

arguments do not carry any force and it is apparent from the order passed by this court in Criminal Writ Petition No.2360 of 2006 that accused no.5 has been impleaded in the pending complaint under a mistaken belief or wrong notion and no triable action in the said complaint can be attributed to him.

4. In the normal course when an order of process is sought to be challenged the parties are required to approach the Sessions Court by filing a Criminal Revision Application under Section 397 of Cr.P.C. However, in the instant application the process was not issued and the learned Magistrate had passed an order under Section 202 of Cr.P.C. directing the Manikpur Police Station to investigate and submit a report.

5. Hence the application succeeds and the same is hereby allowed by making Rule absolute in terms of prayer clause (B) qua the applicant (accused No.5) only.

(B.H. Marlapalle,J.)